UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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CARMEN PEREZ,

Plaintiff.

-against-

IDALIA RIOS, ALFONSO NAZARIO, DANIEL ANTHONY STERLING and JOHN DOE, name being used as fictitious since identity of the owner is unknown,

Defendants.
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PHYSICIAN'S AFFIRMATION

Docket No.: 06 CV 0873 (BSJ) (GWG)

AHMAD RIAZ, M.D., a physician duly licensed to practice medicine in the State of New York, pursuant to the applicable provisions of the Civil Practice Law and Rules, hereby affirms, under penalties of perjury, the truth of the following:

1. I am a physician duly authorized by law to practice medicine in the State of New York and I maintained an office at 92-54 Queens Boulevard, Rego Park, NY 11374.

2. I first examined CARMEN PEREZ on June 27, 2002 for injuries sustained as the result of an accident, which occurred on June 25, 2002. The patient stated that following the accident her son drove her to Montefiore Medical Center where she was examined, treated and released. She went home from the hospital and two days later when the pain in the affected areas did not subside she sought medical attention at my office.

3. The nature and extent of the injuries revealed at initial physical examination was as follows:

DISPLACEMENT OF CERVICAL INTERVERTEBRAL DISC WITHOUT MYELOPATHY; TRAUMATIC MUSCULO-LIGAMNETOUS STRAIN/SPRAIN OF THE NECK; LUMBOSACRAL JOINT LIGAMENT SPRAIN; DISPLACEMENT OF LUMBAR INTERVERTEBRAL DISC WITHOUT MYELOPATHY; SPRAIN/STRAIN OF LEFT SHOULDER.

4. In addition, the initial examination revealed a loss of range of motion in the cervical and lumbosacral spine with marked tenderness with muscle spasm in the paraspinal muscles. At that time, it was not known whether the limited range of motion would persist or resolve. A conservative course of physical therapy was then prescribed including Heat Therapy, Electrical Muscle Stimulation, Ultrasound Therapy, Massage and a variety of muscle strengthening and range of motion exercises which were done by the patient both during the course of therapy at the office as well as at home.

5. Computerized ROM studies performed on July 9, 2002 revealed 22% impairment in cervical spine and 28% impairment of lumbar spine.

6. Nevertheless, the patient's complaints of neck, lower back and left shoulder pain continued despite the course of therapy. A series of tests including an MRI were then prescribed to determine the extent of the injuries to the spine, left shoulder and surrounding areas. The results of MRIs performed on July 15, 2002 and July 30, 2002 were as follows:

> **MODERATE SIZE HERNIATED DISC AT C6-C7 WITH COMPROMISE OF THE ANTERIOR SUBARACHNOID SPACE AND C5-C6 VENTRAL BULGE;**
>
> **MODERATE SIZE CENTRAL HERNIATED DISC AT L3-L4 WITH POSTERIOR DISPLACEMENT OF THE THECAL SAC AND NARROWING OF DISC SPACE;**
>
> **LEFT SHOULDER JOINT EFFUSION WITH SWELLING INVOLVING ACROMIOCLAVICULAR JOINT AND INFERIOR BULGING OF THE JOINT CAPSULE CAUSING PRESSURE EFFECT ON THE SUPRA SPINATUS MUSCLE AND TENDON.**

7. In addition, an EMG was ordered which revealed:

BILATERAL L5 RADICULOPATHY

8. Ms. Perez was also referred to Laximidhar Diwan, M.D., for an orthopedic consultation, who diagnosed left shoulder rotator cuff tear and recommended an arthroscopic surgery. The patient opted not to proceed with the surgery and continue with therapy.

9. The course of therapy was then modified and intensified to conform to these findings. My follow up examination conducted on September 19, 2002 revealed unchanged and still painful ranges of motion, tenderness and muscle spasms in cervical, lumbar spines as well as left shoulder. The patient's course of treatment ended when it was determined that a maximum medical benefit had been derived from physical therapy.

10. During the course of physical therapy lasting approximately three months in total, patient's daily activities were significantly limited. At the conclusion of the treatment period, it was determined that further physical therapy would be futile and that the injuries and limitations suffered by the patient were permanent and no complete cure or rehabilitation was likely. The patient's therapy then ended and the patient continued with home therapy and exercise.

11. I recently re-examined Ms. Perez on April 18, 2007. My latest examination showed that despite a substantial range of therapy and exercise, the injuries have not been resolved. The patient still complained of wide variety of limitations to her daily activities. In addition, the patient continues to complain of pain in the neck, lower back pain and left shoulder pain.

12. The objective range of motion testing of cervical spine revealed flexion 60 degrees (normal 60), extension 40 degrees (normal 75), lateral rotation 60 degrees (normal 80), lateral bending 40 degrees (normal 45) with a 23% overall marked loss of motion in the cervical spine. The lumbosacral spine testing revealed flexion at 70 degrees (normal 90), extension 20 degrees (normal 30), lateral bending measured at 30 degrees (normal 40) and lateral rotation 20 degrees

(normal 30) with a 26% overall marked loss of motion in the lumbosacral spine. In addition, the left shoulder testing revealed flexion at 120 (normal 170) and abduction at 120 degrees (normal 170) with a 29% overall marked loss of motion in the left shoulder. Moreover, tenderness of paraspinal muscles and muscle spasms were noted in cervical and lumbar spines upon movement and palpitation during the exam. Impingement sign was positive. The patient tested negative for malingering during the exam.

13. Due to the length of time between the initial trauma which brought about these complaints and considering the intensive course of treatment which the patient underwent, the continuation of the subjective complaints confirmed by the result of objective testing leads to my conclusion that these injuries are chronic in nature and it can be further determined with a fair degree of medical certainty that these injuries are permanent in nature.

14. The patient currently suffers from a partial disability related to her loss of range of motion. In my opinion, the amount of time that has passed between the initial trauma and the present demonstrates that this partial disability, which the patient suffers from, may be permanent in nature. As such, the patient has suffered and will continue to suffer a permanent significant limitation of the use of her cervical and lumbar spines and left shoulder.

15. In addition, intermittent episodes of exacerbation are expected to occur during the course of the patient's lifetime. The patient is not expected to recover fully or be able to perform her normal daily activities in a pain-free environment as she did in the past.

16. As a result of my examination and my review of the medical history of the patient, I have determined that the accident, which occurred on June 25, 2002 was the direct and proximate cause of the injuries discussed above, including but not limited to cervical disc

herniation at C6-C7, disc bulge at C5 C6, lumbar disc herniation at L3-L4, lumbar L5 radiculopathy and left shoulder rotator cuff tear and joint effusion.

I affirm under the penalties of the perjury that the statements made herein are true, except as to those statements as are based on information and belief, which statements I believe to be true.

DATED: 4/25/2007

AHMAD RIAZ, M.D.

QUEENS ARTHROSCOPY & SPORTS MEDICINE

Laxmidhar Diwan, M.D.

Diplomate American Board of Orthopaedic Surgery

Ben Lyhovsky, Esq.
112-41 Queens Blvd
Suite 101A
Forest hills, N.Y. 11375

RE: Carmen Perez
D/A: 6/25/02
D/E: 11/13/06

The following is a narrative report concerning the injuries Ms. Carmen Perez sustained in a motor vehicle accident on 6/25/02.

The patient is a 59 year-old right-handed handed female who was a restrained front seat passenger in a car involved in a motor vehicle accident on 6/25/02. The patient states that the car was struck from the rear. The patient was forcefully tossed to and fro, causing her to come in contact with the interior of the vehicle. The patient sustained multiple injuries as a result of this accident, namely to her left shoulder, lower back and neck.

The patient was taken to Hospital by ambulance where emergency treatment was rendered. The patient denied any loss of consciousness. The patient was subsequently discharged home.

When her symptoms persisted, she presented to Bronx Advanced Medical for further evaluation and treatment of her symptoms. The patient remained under their care receiving physical therapy and other rehabilitative treatment and medication.

She was seen in my office on 9/23/02 and was advised Diagnostic and Operative Arthroscopy of the Left Shoulder. The patient did not want to undergo surgery at that time. She presents today, reporting that she continues to have pain in the left shoulder.

The patient complains of having difficulty with repetitive overhead activities and behind the back reaching. The patient is unable to lift or carry any heavy objects. There is pain when lying down on the left side

and nocturnal awaking due to pain. The patient reports the pain interferes with the performance of the activities of daily living which is causing her some concern.

The patient was tried on physical therapy and medication; however, none of these modalities seemed to help her.

She also complains of worsening pain in the lower back, especially when carrying anything. The patient she has difficulty standing for any period of time and has difficulty bending, sitting, and lying down for long periods. The pain is made worse by sneezing and coughing.

The patient complains of pain and limitation of motion involving the neck. The patient is complains of difficulty turning her head from side to side. Flexion and extension are also reported as painful.

PAST MEDICAL HISTORY: The patient suffers from Hypertension and Diabetes.

PAST SURGICAL HISTORY: Tubal ligation

FAMILY HISTORY: There is no family history of Diabetes, Hypertension, or Cardiac disease.

MEDICATION AND ALLERGIE: The patient has no known allergies and is currently taking NSAID's when needed for pain.

PERSONAL HISTORY: The patient does not smoke cigarettes and denies alcohol use. She stands 5'1" and weights 170 lbs.

PHYSICAL EXAMINATION (11/13/06)

CERVICAL SPINE

On physical examination of the cervical spine, there was tenderness in the C4/5, C5/6 levels. Also noted was paraspinal muscle spasm. Deep tendon reflexes were 2+ and symmetrical, bilaterally. Ranges of motion were as follows:

	NORMAL	EXAM
Flexion	60°	0-30°
Extension	50°	0-20°
R/L Lat. Flex	40°	0-15°
R/L Rotation	80°	0-30°

LUMBAR SPINE

On physical examination of the lower back, there was tenderness in the L4/5 and L5/S1 levels. Also noted was paraspinal muscle spasm. Deep tendon reflexes were 2+ and symmetrical, bilaterally. There was no bowel or bladder dysfunction. Ranges of motion were as follows:

	NORMAL	EXAM
Flexion	55°	0°-30°
Extension	35°	0°-20°
R/L Lat. Flex	30°	0-15°
R/L Rotation	30°	0-15°

Straight leg raise is positive.

LEFT SHOULDER

On examination of the left shoulder, there was normal contour. There was tenderness in the front and lateral aspects of the shoulder. There were crepitations in the subacromion space. There was weakness of external rotation and weakness of the deltoid and supraspinatus. Impingement sign was positive.

Ranges of motion were as follows:

	NORMAL	EXAM
Flexion:	0°-170°	0°-110°
Abduction:	0°-180	0°-110°

Rotations are limited

MRI of the left shoulder performed on 7/30/02 is reported as showing joint effusion, post-traumatic in nature; evidence of swelling involving the AC joint; inferior bulging of the joint capsule causing pressure effect on the supraspinatus muscle tendon complex.

MRI of the cervical spine performed on 7/15/02 is reported as showing straightening of the cervical spine due to spasm; moderate sized disc herniation C6/7; compromise of the anterior subarachnoid space as a result of herniation; presence of a ventral bulge at C5/6, anteriorly

MRI of the lumbar spine was performed on 7/30/02 revealed moderate sized central disc herniation L3/5 with posterior displacement of the thecal sac and narrowing of the disc space; straightening and reversal of the lordotic curve

Also the following records were present and reviewed:

- EMG/NCV performed on 7/16/06, upper and lower, revealing evidence of L5 radiculopathy, bilaterally
- Consultation of Dr. Tatyana Kisina, P.M.& R., dated 7/16/02
- Initial consultation report of Dr. Ahmad Riaz, Internal Medicine, dated 6/27/02
- Follow up consultation of Dr. Riaz, dated 9/19/02.

IMPRESSION AND DISCUSSION

Ms. Perez continues to have significant, ongoing pain, discomfort and limitations from the injuries sustained in the accident on 6/25/02

Time has proven that the patient's condition is serious and there continues to be exacerbations and aggravations of the injuries. There is a great probability of premature degenerative changes as a result of these injuries, further limiting the patient.

It is my opinion that the above objective and quantitative findings as described have caused significant, permanent and consequential limitations of bodily function. If the history given by the patient is true and accurate, it can be stated with a reasonable degree of medical certainty, that the above objective and quantitative findings as described have caused significant, permanent and consequential limitations of bodily function, which are a direct result of the injuries suffered by Ms. Perez in the motor vehicle accident of 6/25/02.

PHYSICIAN AFFIRMATION

I, Laxmidhar Diwan, M.D., am a physician duly licensed to practice medicine in the State of New York and affirm to the truth of the above, to the best of my knowledge, under penalties of perjury.

Sincerely,

Laxmidhar Diwan, M.D.

LD/kdr

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARMEN PEREZ,

Plaintiff,

-against-

IDALIA RIOS, ALFONSO NAZARIO, DANIEL ANTHONY STERLING and JOHN DOE, name being used as fictitious since identity of the owner is unknown,

Defendants.

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RADIOLOGIST'S AFFIRMATION

DOCKET NO.:
06 CV 0873
(BSJ) (GWG)

AYOOB KHODADADI, M.D., a physician duly licensed to practice medicine in the State of New York, pursuant to the applicable provisions of the Civil Practice Law and Rules, hereby affirms, under penalties of perjury, the truth of the following:

1. I am a radiologist duly licensed in the State of New York and am associated with Chinatown Medical Imaging, 5 Chatham Square, New York, NY 10038. On or about July 2002, I was associated with Progressive Medical Imaging, P.C., 336 Grand Concourse, Bronx, NY 10451.

2. On July 15, 2002 and July 30, 2002, MRIs of the cervical spine, left shoulder and the lumbar spine of the above named plaintiff, CARMEND PEREZ, were taken at our office.

3. I hereby attest that the following information, photographically inscribed on the images, is true and correct: (a) the name of the injured party; (b) the date when the images were taken; (c) the identifying number thereof; and (d) my name and address, all of which are stated above.

4. I hereby attest that the information inscribed on the aforesaid films is true and further, that the findings set forth within the text of my reports are true, as well. A copy of said reports is annexed hereto. Additionally, if called as a witness at trial, I would attest to the truth of same.

DATED: 10/27/06

AYOOB KHODADADI, M.D.

PROGRESSIVE MEDICAL IMAGING, P.C.
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AYOOB KHODADADI, MD, MEDICAL DIRECTOR
DIPLOMATE AMERICAN BOARD OF RADIOLOGY
C.R. 113253-1

901

Patient Name: Perez, Carmen
Referred By: Dr. Riaz
Date of Examination: 07/15/02

MRI OF THE CERVICAL SPINE:

MRI examination of the cervical spine was performed.
Images were obtained with the following pulse sequences.

1. Spin echo sagital T-1 weighted using TR 500 ms, TE 25ms.
2. Sagital gradient echo images using TR 600 ms, TE 35ms wit partial flip angle of 20 degrees.
3. Axial gradient echo images using TR 930 ms, TE 35 ms with partial flip angle of 25 degrees.

Examination of the sagital images demonstrates normal signal intensity and height of the vertebral bodies and intervening disc spaces from C-1 to T-1 levels.

There is evidence of a moderate size herniated disc at C6-C7 level causing compromise of the anterior subarachnoid space. Presence of a ventral bulge is seen at C5-C6 level anteriorly. Also noted evidence of straightening of cervical spine most likely due to muscular spasm.

The bony spinal canal is normal in size, shape and configuration. The perivertebral soft tissues are normal and intact. There is no evidence of fracture, bone erosion or bone destruction. The foramen magnum region is unremarkable. There is no evidence of tansilar ectopia.

Examination of axial images reveals that the thecal sac and spinal cord are noted to be unremarkable. The posterior subarachnoid space is normal. There is no evidence of encroachment of neural foramina.

IMPRESSION:

1. Evidence of straightening of cervical spine most likely due to muscular spasm.
2. There is evidence of a moderate size herniated disc at C6-C7 level.
3. Compromise of the anterior subarachnoid space is noted as a result of the above herniation.
4. Presence of a ventral bulge is seen at C5-C6 level anteriorly.

Ayoob Khodadadi, M.D.

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Patient Name: Perez, Carmen
Referred By: Dr. Riaz
Date of Examination: 07/30/02

MRI OF THE LEFT SHOULDER:

MRI examination of the shoulder was performed. Images were obtained with the following pulse sequences. T-1 weighted axial images. Proton density and T-2 weighted coronal images. T-1 weighted sagital images.

There is no evidence of bone erosion or bone destruction. The signal intensity of the bony structure is noted to be normal. The infraspinatus muscle and tendon are well outlined and are normal. There is no evidence of rotator cuff tear or injury.

There is evidence of swelling involving the acromioclavicular joint, which is associated with inferior bulging of the joint capsule causing pressure effect on the supraspinatus muscle and tendon. There is evidence of joint effusion, which might be posttraumatic in nature.

The gleno humeral joint is noted to be normal. The anterior and posterior labrum is well outlined and is normal. The subdeltoid bursa is unremarkable. There is no evidence of internal derangement of the shoulder joint.

IMPRESSION:

1. There is evidence of joint effusion, which might be posttraumatic in nature.
2. Evidence of swelling is seen involving the acromioclavicular joint.
3. Inferior bulging of the joint capsule is noted causing pressure effect on the supra spinatus muscle and tendon.

Clinical correlation is recommended.

A. Khodadadi MD

Ayoob Khodadadi, M. D.

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901

PATIENT NAME: Perez, Carmen
REFERRED BY: Dr. Riaz
DATE OF EXAMINATION: 07/30/02

MRI OF THE LUMBAR SPINE:

MRI examination of the lumbar spine was performed.
Images were obtained with the following pulse sequences.

1. T-1 weighted sagittal images.

2. T-1 weighted axial images.

3. Proton density and T2 weighted sagittal images.

The signal intensity of the bony structures is noted to be normal and symmetrical. There is no evidence of fracture, bone erosion or bone destruction.

There is evidence of a moderate size central herniated disc at L3-L4 level causing posterior displacement of the thecal sac and narrowing of disc space at this level. Also noted evidence of straightening and reversal of the lordotic curve of the lumbar spine most likely due to muscular spasm.

There is no evidence of cord displacement or cord compression. The neural foramina and posterior elements are noted to be normal. The anterior and posterior longitudinal ligaments are well outlined and are normal. The nerve roots are unremarkable.

IMPRESSION:

1. There is evidence of a moderate size central herniated disc at L3-L4 level.
2. Posterior displacement of the thecal sac and narrowing of disc space is noted at this level resulting of the above herniation.
3. Evidence of straightening and reversal of the lordotic curve of the lumbar spine most likely due to muscular spasm.

A. Khodadadi M.D.

Ayoob Khodadadi, M.D.